COLORADO STATE BOARD OF MEDICAL EXAMINERS

FULL BOARD OPEN MINUTES

August 16, 2007 9:03 a.m.

A full board meeting of the Colorado State Board of Medical Examiners was held Thursday, August 16, 2007, at the Denver Post Building, 1560 Broadway, Conference Room 1380, Denver, Colorado at 9:03 a.m. The meeting was noticed in accordance with Division policy.

Present were Dr. Allen-Davis, Dr. Arja, Dr. Bair, Dr. Calonge (arrived 9:20), Dr. Faricy, Mr. Jennings, Dr. Jobin, Dr. Jolly (arrived 9:15), Reverend Leivers, Dr. Matthews, Ms. Radcliff, and Dr. Watts.

The meeting was conducted by Dr. Faricy.

Also in attendance for all or part of the meeting were Board staff Cheryl Hara, Program Director, Susan Miller, Director of the Healthcare Section, Cindy Klyn, Enforcement Program Manager, Danise Hayes, Program Assistant, Claudia Brett Goldin, First Assistant Attorney General, and Sue Kim, Assistant Attorney General.

MINUTES

A motion was made, seconded, and carried to approve the open minutes of the May 15, 2007 meeting as amended.

REPORTS

President's Report:

Dr. Faricy introduced new Board members.

Dr. Faricy reported on the book, *Better: A Surgeon's Notes on Performance*, by Atul Gawande, and recommended it to the Board.

Section Director's Report:

A. Board Member Confidentiality Agreement

The Board reviewed a memorandum dated June 29, 2007, regarding a Confidentiality Agreement for Board and Committee Members and members signed an Agreement.

B. <u>Updates</u>

Susan Miller reported on the prescription drug monitoring program and the physician profiling bill, HB 1331.

Program Director's Report:

Nothing to report.

Outreach Report:

Dr. Allen-Davis is serving on Governor Ritter's 208 Commission looking at health care reform.

GENERAL BUSINESS

PUBLIC RULEMAKING

A Rulemaking Hearing to Consider Emergency Revision of Rules and Regulations for Rule 500 Colorado Board of Medical Examiners Rules Defining the Duties and Responsibilities of Emergency Medical Services, Medical Directors and the Authorized Medical Acts of Emergency Medical Technicians commenced at 9:10 a.m.

A motion was made, seconded, and carried to convene the public rulemaking hearing at 9:10 a.m. The Hearing was properly noticed under the provisions of the Administrative Procedure Act.

Dr. Faricy presented an overview of the proposed rule. A full opportunity was provided for submission of oral or written comments by the public.

Janet Stephens, Vice-President of Government Affairs, Colorado Hospital Association, testified regarding Rule 500, Colorado Board of Medical Examiners' defining duties and responsibilities of emergency medical services medical directors and the authorized medical acts of emergency medical technicians (Rule 500).

A motion was made, seconded and carried to approve the revised Emergency Rules and Regulations of Rule 500 after making a finding of imperative necessity.

The rulemaking session concluded at 9:28 a.m.

Future Rulemaking

A motion was made, seconded and carried to post rulemaking for November Full Board meeting regarding Rule 500, Rule 800, and rules regarding the physician profiling bill.

Rule 500 Waiver Requests

Fred Severyn, M.D., Medical Director, Prehospital Care Program, was present at the meeting to discuss waiver requests. The Board reviewed a July 16, 2007, memorandum from Dr. Severyn outlining the waiver requests and the Medical Advisory Group (MAG) recommendations, along with the waiver applications.

Dr. Jobin recused himself from participation in the vote regarding his request for a waiver of Rule 500.

A motion was made, seconded and carried to accept all waiver requests proposed by MAG, with conditions as recommended by MAG, with the exception of Item #9, which was approved for a period of three years only with the requirement that Dr. Grant Hurley keep information regarding the use of shoulder dislocation to evaluate repeat users of the technique.

COPIC 3R Program

Theodore Clarke, M.D., was present at the meeting to update the Board on the 3R Program at COPIC. Steve Rubin and Alan Lembitz also appeared.

No action was required.

Kaiser Permanente

Susan Koontz, Michael Raggio, M.D., and Emily Sandelin were present. Glenda Graaf reported on the *reSOLVE* program of Kaiser Permanente.

No action was required.

Request for Waivers of the Board Rule 400 regarding Licensure and Practice by Physician Assistants

Floyd Russak, M.D.

The Board reviewed correspondence and a waiver application from Floyd Russak, M.D.

A motion was made, seconded, and carried to approve the waiver not to exceed two FTE at any given time.

Mia Scott, M.D.

The Board reviewed correspondence and a waiver application from Mia Scott, M.D.

A motion was made, seconded, and carried to deny the waiver due to insufficient justification for a waiver.

Website Notice to Consumers on Rule 800

The Board reviewed an August 1, 2007, memorandum from Cheryl Hara regarding delegation of medical services and a possible website notice to consumers, as well as additional information, on Rule 800.

A motion was made, seconded and carried to approve the website notice to consumers after counsel and staff make revisions.

United Council for Neurologic Subspecialties

The Board reviewed a May 25, 2007, letter from Mary Post, Acting Executive Director of United Council for Neurologic Subspecialties, regarding policies and guidelines regarding physician advertising.

A motion was made, seconded and carried to direct staff to respond by referring to and enclosing Rule 290 regarding advertising.

Fee Splitting and Interpretation of the Medical Practice Act

First Assistant Attorney General Claudia Brett Goldin and Assistant Attorney General Sue Kim were present at the meeting and discussed a request made to Attorney General John Suthers regarding providing an opinion on fee splitting. Michael Argyres, M.D., appeared.

At 11:45 a.m., a motion was made, seconded, and carried unanimously to enter into executive session pursuant to Section 24-6-402(3)(a)(II) and (III), C.R.S., to discuss matters related to this topic, which, by law, are confidential and constitute confidential attorney-client privileged information pursuant to § 13-90-107(1)(b), C.R.S.. After discussion, at 12:10 p.m., the Panel voted to leave executive session and return to open session to act on this case.

A motion was made, seconded, and carried to waive a potential conflict and provide the Board's expertise regarding the interpretation of the Medical Practice Act involving fee-splitting. A discussion on the topic followed.

CPHP REPORTS

The Board reviewed the June 30, 2007 Fourth Quarter Report and the July 2006-2007 Annual Report.

A motion was made, seconded, and carried to accept both reports.

ATTORNEY GENERAL REPORTS

The Board reviewed a case status update of Full Board cases.

No action was required.

Advertising Rule 290

The Board reviewed a July 27, 2007, memorandum from First Assistant Attorney General Claudia Brett Goldin regarding Rule 290.

A motion was made, seconded and carried to publish a rulemaking notice for the November Full Board meeting.

REPORTS OF INVESTIGATION

Ruth Adele, Unlicensed, Case #2007-001532

Dr. Calonge recused himself from participation in this case and departed the meeting

The Board reviewed a Report of Investigation, dated July 27, 2007, from Glenn Frank, Investigator.

A motion was made, seconded and carried to dismiss this case for no reasonable cause to warrant further action with reference thereto.

Venus Moshrefi, Unlicensed, Case #2007-002457

The Board reviewed a Report of Investigation, dated July 13, 2007, from Martha Mesch, Investigator.

A motion was made, seconded and carried to refer this case to the Office of the Attorney General to obtain an injunction. If Ms. Moshrefi can establish she has made appropriate changes, the Office of the Attorney General has authority to obtain a cease and desist order in lieu of an injunction.

Janice Walters, Unlicensed, Case #2006-004559

The Board reviewed a Report of Investigation, dated June 20, 2007, from Martha Mesch, Investigator, a memorandum from staff dated July 29, 2007, and a letter from Michael Schindel, M.D.

A motion was made, seconded and carried to direct staff to send a letter to Dr. Schindel stating his proposal does not sufficiently comply with Rule 800 because there is insufficient contact to establish a physician-patient relationship and to notify Janice Walters not to practice until she is compliant with Rule 800.

Daniel Patrick Sloan, The Freakshow, Possible Unlicensed Practice

The Board reviewed the July 11, 2006, complaint and supporting documents from The Parker Law Firm.

A motion was made, seconded and carried to refer Mr. Sloan to the Office of Investigations.

Ruben Garcia, Possible Unlicensed Practice

The Board reviewed a June 5, 2007 letter from Joseph Goldhammer, Esq., regarding Ruben Garcia and the possible unlicensed practice of medicine.

A motion was made, seconded and carried to direct staff to refer this matter to the Office of Investigations for investigation.

Brian Fox, Possible Unlicensed Practice

The Board reviewed a complaint filed by CAPA regarding this individual who is not licensed as a PA in Colorado and uses the term RPA.

A motion was made, seconded and carried to send a letter warning of the prohibition in Rule 800 regarding the use of the term RPA.

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James Herman, Possible Unlicensed Practice

The Board reviewed a complaint filed by CAPA regarding this individual who is not licensed as a PA in Colorado and uses the term RPA.

A motion was made, seconded and carried to send a letter warning of the prohibition in Rule 800 regarding the use of the term RPA.

Augustine Rios, Possible Unlicensed Practice

The Board reviewed a memorandum from First Assistant Attorney General Claudia Brett Goldin and attached materials.

A motion was made, seconded and carried to refer this case to the Office of the Attorney General to obtain a cease and desist order with admissions. Settlement guidance was provided.

LETTERS OF INTEREST

The Board reviewed the letters of interest listed below:

<u>Letter dated July 10, 2007, from George Mychaskiw, O.D.</u>, regarding Rocky Vista University.

<u>Letter dated May 10, 2007, from Frederick Meoli, D.O.</u>, President NBOME, regarding NBOME Policy on Annotation of Non-Standard Test Scores.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:15 p.m.

FOR THE BOARD OF MEDICAL EXAMINERS

Approved by: Patrick O. Faricy, M.D. Date: November 15, 2007